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BOOK REVIEWS

CASES AND OTHER AUTHORITIES ON LEGAL ETHICS, by George P. Costigan, Jr., Professor of Law in Northwestern University. American Case Book Series, William R. Vance, General Editor. (St. Paul: West Publishing Co., 1917, pp. xxvii, 616.)

As indicated in its title, this volume, while primarily a casebook on Legal Ethics, contains not only cases but much text-matter as well. In the arrangement of the very full contents, text and cases are admirably blended, so that each illustrates or supplements the other. The text-matter, which, at a rough estimate, composes one-third of the volume, is made up of brief and pithy extracts from an extensive bibliography, dating from Doctor and Student to the crisp little volume of Mr. Julius Henry Cohen, reviewed in the April number of this journal. Aside from his editorial work, the author's personal contributions are found only in his full and scholarly footnotes. If Professor Costigan had done no more than to bring together and render accessible to students and practitioners these widely scattered contributions to the literature of legal ethics and to the history of the profession he would have accomplished a noteworthy task.

Included in the list are accounts of the behavior of famous lawyers in cases of celebrity—cases famous either because of their inherent interest, or made so by the conduct, proper or improper, of distinguished lawyers who were counsel in them. We find, for instance, an account of the conduct of Sir Edward Carson and Sir F. E. Smith in the recent Marconi Cases—of Clarence S. Darrow in the equally recent McNamara Dynamiting Cases in Los Angeles—and, more remotely, Abraham Lincoln in the Armstrong Murder Case (in which the incident of the alleged false almanac figured)—Lord Brougham in Queen Caroline's Case—Charles Phillips in Courvoisier's Case (in which the client confessed his guilt to his counsel)—Rufus Choate in Professor Webster's Murder Case—and others of similar character.

There are several hundred cases collected in the volume—many reported in full, and others made available by citation and intelligent comment. These cases cover practically the whole field of professional activities, and illustrate the concrete application of ethical rules by the courts.

The American Bar Association's Canons of Ethics, and the Questions and Answers of the Committee on Professional Ethics of the New York County Lawyers' Association, are given due prominence.

The selections from the writings of other authors are made with discriminating judgment, and assist materially in rounding out the completeness of the work. There is probably no other volume in which the professional reader will find so rich a collection of ethical (and, we may say, classical) material. For teachers and students of professional ethics, Professor Costigan's plan seems ideal, and the volume should receive an enthusiastic welcome from the Law Schools of the country. One might venture further to hope that the volume might be widely

circulated among judges and practitioners. The purchase by the several State Bar Associations of a dozen or so copies, each, of Professor Costigan's volume and of Mr. Cohen's *THE LAW—BUSINESS OR PROFESSION?* and the circulation of these by some easily devised plan among the members of each local bar, to be at the disposal of each local bar for a limited time, and then passed on to another, would go very far toward educating the bar of the country along proper ethical lines.

W. M. LILE.

STANDARDS OF AMERICAN LEGISLATION, by Ernst Freund. (Chicago: University of Chicago Press, 1917, pp. xx, 327.)

No people can afford to have its policies fixed for all time, and when constitutions limit legislative action either laws which are desired cannot be put into effect, or, if the emergency is sufficiently great, the constitutional provisions are changed or disregarded. Thus, in the well-known *Ives* case the New York Court of Appeals annulled a Workmen's Compensation Act, but recommended that an amendment to the constitution be adopted sanctioning such legislation. This showed that in the opinion of the New York court, due process and obligation of contract provisions did not comprehend immutable principles, but simply a policy of distributive justice which was liable to change through progress in economic and social thought. Now, the chief difficulty of such a judicial veto is that the constitutional policies which are enforced are wholly indefinite. Obligation of contracts is not an absolute right; the courts are continually permitting qualifications, but in doing so they simply interpose their standards of reasonableness against legislative discretion. At the present time, such a veto may be necessary for governments where, owing in part to the separation of powers, legislatures feel as little responsibility as they do in the United States (the condition may be said to be both the justification and effect of judicial control), but the exercise of such a political function by the courts is not very satisfactory. Professor Freund has attempted in this book "to suggest the possibility of supplementing the established doctrine of constitutional law which enforces legislative forms through *ex post facto* review and negation by a system of positive principles that should guide and control the making of statutes, and give a more definite meaning and content to the concept of due process of law."

The author first examines the historic changes in the relation of law to individual rights and sketches the development of social legislation. He shows the inadequacies of the common law and how these give rise to the tasks and hazards of legislation. But the mere negative of bills of rights has only succeeded in imposing a vague standard of reasonableness, and the judicial decisions show no attempt to furnish any principles of legislation. All this is preliminary to the discussion of the author's real thesis—principle as applied to legislation. This, he says, rises above both constitutional requirement or policy "as being an ideal attribute demanded by the claim of statute law to be respected as a rational ordering of human affairs; it may be a proposition of logic, of justice, or of compelling expediency; in any event it is some-